



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF N-O-S-

DATE: OCT. 11, 2017

APPEAL OF VERMONT SERVICE CENTER DECISION

APPLICATION: FORM I-914, APPLICATION FOR T NONIMMIGRANT STATUS

The Applicant, a native and citizen of Mexico, seeks T-1 nonimmigrant classification as a victim of human trafficking. *See* Immigration and Nationality Act (the Act) sections 101(a)(15)(T) and 214(o), 8 U.S.C. §§ 1101(a)(15)(T) and 1184(o). The T-1 classification affords nonimmigrant status to victims who assist authorities investigating or prosecuting the acts or perpetrators of trafficking.

The Director of the Vermont Service Center denied the Form I-914, Application for T Nonimmigrant Status (T application), concluding that the Applicant had not demonstrated that she was a victim of trafficking in persons, was physically present in the United States on account of such trafficking, and had complied with any reasonable requests for assistance in the investigation or prosecution of acts of severe forms of trafficking in persons.

On appeal, the Applicant submits a brief and asserts that the record demonstrates that she was a victim of severe form of trafficking in persons and is physically present in the United States on account of that trafficking.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

An applicant may be classified as a T-1 nonimmigrant if he or she: is or has been a victim of a severe form of human trafficking; is in the United States on account of such trafficking; has complied with any reasonable requests for assistance in the investigation or prosecution of trafficking; and would suffer extreme hardship involving unusual and severe harm upon removal from the United States. Section 101(a)(15)(T)(i) of the Act; 8 C.F.R. §§ 214.11(b)(1) - (b)(4).

The term “severe form of trafficking in persons” is defined as “the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.” 8 C.F.R. § 214.11(a) (2017).¹

¹ The Department of Homeland Security issued an interim rule, effective January 18, 2017, amending its regulations at 8 C.F.R. § 214.11 for victims of human trafficking who seek T nonimmigrant status. *See Classification for Victims of*

Involuntary servitude is defined as “a condition of servitude induced by means of any scheme, plan, or pattern intended to cause a person to believe that, if the person did not enter into or continue in such condition, that person or another person would suffer serious harm or physical restraint, or the abuse or threatened abuse of legal process.” *Id.* Coercion is defined as: “threats of serious harm to or physical restraint against any person; any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or the abuse or threatened abuse of the legal process.” *Id.*

The burden of proof is on an applicant to demonstrate eligibility by a preponderance of the evidence. 8 C.F.R. § 214.11(d)(5); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). An applicant may submit any credible evidence for us to consider in our *de novo* review; however, we determine, in our sole discretion, the evidentiary value to give that evidence. 8 C.F.R. § 214.11(d)(5).

II. ANALYSIS

The Applicant, a citizen of Mexico, first entered the United States in March 2013 with a B1/B2 Border Crossing Card. She subsequently departed and reentered the United States at least five times between May 2013 and June 2015. The Applicant asserts that all of her entries and departures were arranged by her former boyfriend, who brought her to the United States with a false promise of marriage and then subjected her to domestic violence, involuntary servitude, and sexual slavery. The Applicant filed her T application in April 2016.

With her T application, the Applicant submitted a personal statement; a Form I-914, Supplement B, Declaration of Law Enforcement Officer for Victim of Trafficking in Persons signed by a domestic violence detective from the [REDACTED] California Police Department in 2015; identity documents for herself and her two children; a copy of her Border Crossing Card; a record of her arrivals and departures; a 2013 police report regarding an incident in which her former boyfriend and alleged trafficker, F-² threatened to kill himself; a 2015 police report regarding the Applicant’s claims of domestic abuse and human trafficking; a letter confirming her stay at a domestic violence shelter; and letters of support from her friends and relatives. In response to a request for evidence from the Director, the Applicant submitted a brief and articles regarding forced labor and the intersection between human trafficking and domestic violence. On appeal, she submits a brief; copies of text messages F- sent her in violation of a protective order; a police report regarding that violation; a 2016 letter to the Applicant from the [REDACTED] California District Attorney’s Office regarding a criminal complaint against F-; two letters from the Applicant’s therapists regarding her treatment for depression, anxiety, and posttraumatic stress disorder relating to severe domestic violence in her relationship with F-; and a summary of a case before a California district court in which the defendants were sentenced for charges relating to human trafficking.

Severe Forms of Trafficking in Persons; Eligibility for “T” Nonimmigrant Status (Interim T Rule), 81 Fed. Reg. 92266, 92308-09 (Dec. 19, 2016).

² We use initials in this decision to protect the individual’s identity.

A. The Applicant's Trafficking Claim

In her statement with her T application, the Applicant indicated that she knew F- as a child in Mexico, but never had a romantic relationship with him. She stated that he contacted her online in late 2012 and then visited her in Mexico in January 2013, telling her that he wanted to marry her and promising "thirty years of happiness." The Applicant recalled that she was uncertain, but after dating F- for two weeks during his visit to Mexico, she agreed to marry him. She stated that she was aware that F- was married to another person at that time, but he told her he was in the process of getting a divorce. According to the Applicant, F- helped her complete an application for a tourist visa and paid the related fees. She stated that she and F- traveled to California together in March 2013 and he took her to a house he called their "new home." The Applicant recalled that after she had been in the United States for a week, she was at home alone when a woman arrived at the house and claimed to be F-'s wife. The Applicant reported that F-'s wife told her that she and F- were happily married and were not getting divorced. The Applicant stated that when F- came home from work, he confirmed that he was still married, had children with his wife, and had no plans to leave his family. She stated that F- told her that she must accept the situation and that she "belonged to him now." The Applicant recalled that the "relationship became very strained," and F- spent some time living with her and some living with his wife and children, and sometimes went on vacation with his family and left the Applicant alone. She stated that F- did not permit her to leave the house, have friends, or drive his car without permission. She also indicated that she had no money and had to beg F- for money for groceries and laundry. She claimed that F- paid the household bills and turned off the internet, television, and telephone lines when he was angry with her.

Additionally, the Applicant stated that F- told her that he "needed a woman available to him at all times," instructed her on how to dress and think, and mocked her and told her to "shut up" when she tried to express herself. According to the Applicant, F- told her that if she called the police, she would be arrested because he spoke English and she did not, so the police would believe him. She said that F- frequently raped her, forced her to perform sexual acts, and made contraception her responsibility but did not give her any money for it. She stated that when she became pregnant, F- told her that he did not want any children with her. She also recalled that F- dragged her down the stairs when she was two months pregnant, and raped her soon after she gave birth to her son, E-. Also, the Applicant stated that F- questioned whether E- was his child because he "doesn't make ugly babies," frequently yelled at E-, and was physically rough with him.

She also recalled that she and F- argued a lot, and he often threw her out of the house and paid for her to return to Mexico, later traveling to Mexico to bring her back to the United States. The Applicant indicated that she left F- in 2014 and returned to Mexico. She stated that F- followed her and begged her to return, promising her that they would have a "dream ranch" and business together. She stated that she agreed because she believed F- would change, but F- confiscated her Border Crossing Card after that to prevent her from leaving again. The Applicant indicated that F- eventually told her that he did not want to be with her anymore and that she should "find [her] own way back to Mexico." She recalled that she told F- that she would stay with her cousin, and would

travel to Mexico with her cousin later in the year. She stated that F- offered to drive the Applicant and E- to her cousin's house, but when they arrived, he demanded E-'s passport. The Applicant refused, so F- called the police. She stated that the police did not understand Spanish so she was unable to tell them about F-'s abuse, but they provided her a referral to a domestic violence shelter, where she stayed with E- briefly before moving to a different shelter. She stated that F- called her friends and family in late 2015 for information on her whereabouts. According to the Applicant, she went to court in [REDACTED] 2015 and obtained a three-year restraining order against F-. She stated that F- has since sought full custody of E- as a tool to control the Applicant, and she fears that he would harm her if she returned to Mexico.

B. The Applicant Has Not Established She Is a Victim of a Severe Form of Trafficking in Persons

The Director determined that the Applicant did not establish that she was a victim of a severe form of trafficking in persons because she did not show that she was subjected to force, fraud, or coercion for the purpose of involuntary servitude or commercial sex trafficking. The Applicant has not overcome this ground on appeal.

An applicant seeking to demonstrate that he or she was a victim of a severe form of trafficking must show: (1) that he or she was recruited, harbored, transported, provided or obtained for his or her labor or services, (2) through the use of force, fraud, or coercion, (3) for the purpose of subjection to involuntary servitude, peonage, debt bondage or slavery. *See* 22 U.S.C. § 7102(8); 8 C.F.R. § 214.11(a) (defining the term "severe forms of trafficking in persons"). Thus, an applicant must show both the particular "means" used (force, fraud, or coercion) and that such means was used for a particular "end" – namely for the purpose of subjecting the applicant to involuntary servitude, peonage, or debt bondage.

As used in section 101(a)(15)(T)(i) of the Act, the term "involuntary servitude" is defined, in pertinent part, as:

a condition of servitude induced by means of any scheme, plan, or pattern intended to cause a person to believe that, if the person did not enter into or continue in such condition, that person or another person would suffer serious harm or physical restraint; or a condition of servitude induced by the abuse or threatened abuse of legal process. Involuntary servitude includes a condition of servitude in which the victim is forced to work for the defendant by the use or threat of physical restraint or physical injury, or by the use or threat of coercion through the law or the legal process. This definition encompasses those cases in which the defendant holds the victim in servitude by placing the victim in fear of such physical restraint or injury or legal coercion.

8 C.F.R. § 214.11(a).

The Applicant claims on appeal that F- recruited and harbored her through the use of fraud and coercion for the purpose of subjecting her to involuntary servitude and sexual slavery. She states that F- lied when he told her that he intended to marry her, and that she never would have come to the United States with him without such a promise. She further asserts that F- coerced her, through threatened abuse of the legal process and the use and threatened use of violence to her, their child, and himself, to remain in the United States as his domestic and sexual servant.

The Applicant has demonstrated that F- recruited her to come to the United States through the use of fraud. F- contacted the Applicant in 2012 after having known each other as children but not previously having a romantic relationship. Soon after contacting her on the internet, he arrived in Mexico, where he asked her to marry him. The Applicant went to the United States with F- approximately two months after his marriage proposal, but after only one week of living with him here, she learned that F- was still happily married, had children, and had no intention of leaving his family. He kept the Applicant isolated in one house while he also resided with his family in another home. When confronted with this information, F- stated “he was never going to leave his family,” and that the Applicant “had to accept it” and “belonged to him now.” The timeline of these events and F-’s statements indicate that F- did not intend to have a genuine marital relationship with the Applicant as he had promised.

However, the Applicant has not established that F- brought her to the United States for the purpose of subjecting her to involuntary servitude under 8 C.F.R. § 214.11(a). Involuntary servitude is “a condition of servitude induced by means of any scheme, plan, or pattern, intended to cause a person to believe that, if the person did not enter into or continue in such condition, that person or another person would suffer serious harm or physical restraint” *Id.* Servitude is not defined in the Act or the regulations, but is commonly understood as “the condition of being a servant or slave,” or a prisoner sentenced to forced labor. *Black’s Law Dictionary* (B.A. Garner, ed.) (10th ed. 2014).

In the Applicant’s brief on appeal, counsel alleges that F- forced the Applicant to engage in domestic work. However, the Applicant did not describe such a situation in her own statement. Assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988) (citing *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980)). Counsel’s statements must be substantiated in the record with independent evidence, which may include affidavits and declarations. The Applicant also asserts in her brief that F- recruited and harbored her for the purpose of subjecting her to involuntary servitude in the form of sexual services. The evidence shows that F- subjected the Applicant to severe and ongoing domestic violence and sexual abuse, including repeated rape and serious physical abuse. According to the Applicant, F- told her that if she ever called the police, she would be arrested because the police would believe him instead of her. The Applicant correctly notes on appeal that a personal relationship involving domestic violence may qualify as human trafficking in certain cases, and that forced sex may qualify as a type of involuntary servitude.

However, the evidence in this case does not establish that the Applicant believed that she must “enter into or continue in [the] condition” in which she lived during her relationship with F-, as

required by the regulation at 8 C.F.R. § 214.11(a). In her statement in support of her T application, the Applicant indicated that she left F- in 2014 and returned to Mexico. The Applicant did not provide specific details about this event, such as the date she left, her reasons for leaving, her means of transportation, or whether F- was aware that she planned to leave. However, the Applicant indicated that she left voluntarily and traveled to Mexico of her own accord. Additionally, the Applicant indicated that F- went to Mexico and “begged” her to return, and that she agreed because she “was convinced he would change” and believed promises he made. Although the Applicant claims on appeal that she returned to the United States with F- because she was still subject to his control due to his abusive behavior and caught in a cycle of violence, the Applicant’s personal statement indicates that she made an independent, personal decision to leave F- in 2014. Her decision and departure is not consistent with a finding that the Applicant was in a condition of involuntary servitude in which she believed she must remain, as described at 8 C.F.R. § 214.11(a). The Applicant also claims that F- has attempted to control her by seeking custody of E-. However, this occurred after the Applicant had left F- in 2014.

Similarly, although the Applicant claims in her brief on appeal that F- subjected her to slavery by treating her as property and forcing her to perform sexual acts as if she were “an unpaid prostitute,” the evidence does not support such a finding. As the Applicant notes in her brief, slavery is defined as “a situation in which one person has absolute power over the life, fortune, and liberty of another.” *Black’s Law Dictionary* (10th ed. 2014). The Applicant’s statement that she left F- in 2014 and returned to Mexico on her own does not support a finding that she was in a situation of slavery. Although she claims in her brief that the fact that she “eventually escaped on her own does not preclude a finding that she was subjected to involuntary servitude and slavery,” her personal statement does not contain details regarding the circumstances in which she left that would indicate that she did so while under F-’s complete control.

The record also does not indicate that the Applicant was subjected to “a condition of servitude induced by the abuse or threatened abuse of legal process.” The Applicant recounted F- told her that if she ever called the police, she would be arrested because the police would believe him instead of her, but does not indicate that he threatened to falsely report her to the police or other law enforcement authorities when they resided together in order to induce her into servitude. The Applicant stated that upon their separation in 2014, F- called the police after she refused to give him their son’s passport and she was referred to a domestic violence shelter. She later went to court and obtained a three-year restraining order against F-. Although she states F- subsequently sought full custody of E- as a tool to control her, the record does not indicate that F- abused the custody or any other legal proceedings to subject her to servitude.

The record shows that F- subjected the Applicant and her child to domestic violence over the course of approximately two years. The Applicant has shown that F- induced her to enter into an abusive intimate relationship by fraudulently representing his intentions and marital status. While we do not discount the serious harm the Applicant endured and her ongoing fear of F-, the record does not establish that F- recruited, harbored, transported, provided or obtained the Applicant for her labor or services for the purpose of subjecting her to involuntary servitude. Accordingly, the Applicant has

not established that she is the victim of a severe form of trafficking in persons as required by section 101(a)(15)(T)(i) of the Act.

C. Physically Present in the United States on Account of Trafficking

Physical presence in the United States on account of trafficking includes an applicant who at the time of filing: is currently being subjected to trafficking; was liberated from trafficking by a law enforcement agency (LEA); escaped from trafficking before an LEA was involved; was subject to trafficking in the past and his or her continued presence in the United States is directly related to such trafficking; or was allowed to enter the United States to participate in investigative or judicial processes related to the trafficking. 8 C.F.R. §§ 214.11 (g)(1)(i)-(iv).

As the record does not establish that the Applicant was the victim of a severe form of human trafficking, she consequently cannot show that she is physically present in the United States on account of such trafficking, as required by section 101 (a)(15)(T)(i)(II) of the Act.

D. Assistance in the Investigation or Prosecution of Acts of Trafficking

A reasonable request for assistance means a request made by an LEA to a victim to assist in the investigation or prosecution of trafficking in persons “or the investigation of crime where acts of trafficking are at least one central reason for the commission of that crime.” 8 C.F.R. § 214.11(a). Primary evidence of compliance with such a request is an LEA endorsement. In this case, the Applicant submitted a Form I-914, Supplement B, Declaration of Law Enforcement Officer for Victim of Trafficking in Persons signed by a domestic violence detective from the [REDACTED] California Police Department in 2015. However, because the Applicant has not established that she is the victim of a severe form of trafficking in persons, she cannot meet the other requirements at section 101(a)(15)(T)(i) of the Act.

III. CONCLUSION

The Applicant has not established that she is the victim of a severe form of trafficking in persons. Accordingly, she is ineligible for T nonimmigrant status.

ORDER: The appeal is dismissed.

Cite as *Matter of N-O-S-*, ID# 00561455 (AAO Oct. 11, 2017)